



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB4489

by Rep. Scott Drury

#### SYNOPSIS AS INTRODUCED:

765 ILCS 605/33 new

Amends the Condominium Property Act. Contains a statement of public policy. Provides that a unit owner may bring a legal action against the association or its board of managers to enforce individual or common interest community rights without being required to sue other homeowners or otherwise name them as defendants. Provides that any costs associated with providing notice to unit owners shall be paid by the association and shall not be assessed against the unit owner bringing the action. Provides that any provision of any condominium instrument or any rule or regulation seeking to limit a unit owner's right to commence litigation against an association or its board of managers or to limit the liability of an association or its board of managers for a breach of duty is void as against public policy and shall not be given effect. Provides that a unit owner's compliance with an association's demand does not waive the unit owner's right or ability to challenge the demand in a later commenced legal action. Provides that in certain types of litigation, the court shall award reasonable attorney's fees and costs to the prevailing party. Provides that a court may reduce the award of fees or award no fees to an association: (i) if the court finds that the legal action benefitted the association by clarifying the duties of the association; or (ii) based on other equitable considerations. Provides that the association is barred from recovering any attorney's fees and costs in a claim brought under the Forcible Entry and Detainer Article of the Code of Civil Procedure if the unit owner prevails based on a breach of duty by the association or any member of its board of managers. Provides that in litigation, the association shall represent the best interests of all unit owners and the association without regard to the wishes of the board of managers. Provides that the association may not be represented in litigation by counsel who also represents the association's board of managers either individually or collectively.

LRB099 16942 HEP 42967 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Condominium Property Act is amended by  
5 adding Section 33 as follows:

6 (765 ILCS 605/33 new)

7 Sec. 33. Unit owner's right to fairness in litigation.

8 (a) It is the public policy in this State that any unit  
9 owner has a right to fairness in litigation or other legal  
10 action permitted by this Act, whether the unit owner commences  
11 the litigation or legal dispute or the litigation or legal  
12 dispute is commenced against the unit owner. In order to ensure  
13 that this public policy is implemented and given full effect,  
14 this Section applies in all litigation or other legal actions  
15 permitted by this Act.

16 (b) Notwithstanding any other provision of this Act, a unit  
17 owner may bring a legal action against the association or its  
18 board of managers to enforce individual or common interest  
19 community rights under this Act, condominium instruments,  
20 rules and regulations, or any applicable statute or ordinance  
21 without being required to sue other homeowners or otherwise  
22 name them as defendants. Any costs associated with providing  
23 notice to unit owners shall be paid by the association and

1 shall not be assessed against the unit owner bringing the  
2 action.

3 (c) Any provision of any condominium instrument or any rule  
4 or regulation seeking to limit a unit owner's right to commence  
5 litigation or other legal action against an association or its  
6 board of managers is void as against public policy and shall  
7 not be given effect.

8 (d) Any provision of any condominium instrument or any rule  
9 or regulation seeking to limit or relieve the liability of an  
10 association or its board of managers for a breach of fiduciary  
11 duty or a violation of any duty under this Act is void as  
12 against public policy and shall not be given effect.

13 (e) A unit owner's compliance with an association's demand  
14 for action, or demand to cease action, including any demand to  
15 pay assessments or attorney's fees, does not waive the unit  
16 owner's right or ability to challenge the demand in a later  
17 commenced legal action pursuant to subsection (a) of this  
18 Section.

19 (f) In any litigation or other legal action commenced by an  
20 association or a unit owner to enforce this Act, condominium  
21 instruments, rules and regulations, or any applicable statute  
22 or ordinance, the unit owner shall be awarded reasonable  
23 attorney's fees and costs to the extent the unit owner prevails  
24 as a plaintiff or, if the unit owner is a defendant, prevails  
25 on any affirmative defense or counterclaim related to a breach  
26 by the association or any member of its board of managers of an

1 obligation under this this Act, condominium instruments, rules  
2 and regulations, or any applicable statute or ordinance.

3 (g) Notwithstanding any other provision of this Act, except  
4 in litigation or other legal action brought under Article IX of  
5 the Code of Civil Procedure, in any litigation or other legal  
6 action commenced by an association or a unit owner to enforce  
7 this Act, condominium instruments, rules and regulations, or  
8 any applicable statute or ordinance, the association shall be  
9 awarded reasonable attorney's fees and costs to the extent the  
10 association prevails, except a court may reduce the award of  
11 fees or award no fees: (i) if the court finds that the legal  
12 action benefitted the association by clarifying this Act,  
13 condominium instruments, rules and regulations, or any  
14 applicable statute or ordinance; or (ii) based on other  
15 equitable considerations. In litigation or a legal action  
16 commenced by an association under Article IX of the Code of  
17 Civil Procedure, the association is barred from recovering any  
18 attorney's fees and costs against a unit owner if the unit  
19 owner prevails on any affirmative defense or counterclaim  
20 related to a breach by the association or any member of its  
21 board of managers of an obligation under this Act, condominium  
22 instruments, rules and regulations, or any applicable statute  
23 or ordinance.

24 (h) In any litigation or other legal action involving a  
25 unit owner and an association that arises out of or is related  
26 to enforcement of this Act, condominium instruments, rules and

1 regulations, or any applicable statute or ordinance, the  
2 association shall represent the best interests of all unit  
3 owners and the association without regard to the wishes of the  
4 board of managers. To ensure compliance with this subsection,  
5 in any litigation or other legal action involving a unit owner  
6 and an association that arises out of or is related to this  
7 Act, condominium instruments, rules and regulations, or any  
8 applicable statute or ordinance, the association may not be  
9 represented by counsel who also represents the association's  
10 board of managers either individually or collectively.